APPENDIX - A

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-1281

Daniel R. Baird,
Appellant,
v.
Burlington Northern Santa Fe Railroad
Appellee

Appeal from the United States District Court for the Disctrict of Minnesota
[UNPUBLISHED]

Submitted; April 6, 2007
Filed April 10 2007

Before COLLOTON, HANSEN, and BENTON, Circuit Judges.

PER CURIAM.

Daniel R. Baird appeals from the district Court's[1] adverse grant of summary judgment in his

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[1] The Honorable Donovan W. Frank, United States District Judge for the District of Minnesota

action for relocation benefits from his employer. Having carefully reviewed the record and the parties' briefs, we agree that summary judgment was proper for the reasons stated by the district court. See K.C.1986 Ltd. P'ship v. Reade Mfg., 472 F.3d 1009, 1019-20 (8th Cir. 2007) (de novo review). Accordingly, we affirm. See 8th Cir. R. 47B. We deny Baird's pending motions.

United States Magistrate Judge
United States District Court
412 United States Courthouse
515 W. First St.
Duluth, Minnesota 55802

July 19, 2005

Re Baird V. BNSF CIF. No. 05-731(DWF/RLE)

Dear Mr. Baird:

I am returning what seems to be the original of your pleading entitled: MOTION, STIPULATION, AND ORDER TO AMENDED COMPLAINT. Motions need a hearing date and time, a Stipulation must be signed by all parties, and the court is the only one who can enter an Order. I direct your attention to the Local Rules for the District of Minnesota and the Electronic Case Filing Procedures for the District of Minnesota. Those documents may be viewed from the court's web site: www.mnd.uscourt.gov. I also direct your attention to Rule 15(a), Federal Rules of Civil Procedure, regarding amending pleadings.

Your attorney's MOTION TO WITHDRAW is set for August 4, 2005, at 11:00 a.m. The Court considers you represented by counsel until it's ruling on that Motion Judicial Assistant.

United States Court of Appeals
For the Eighth Circuit
No. 06-1281MN
Filed July 12,2006
Michael Gans Clerk of Court

Daniel R. Baird
Appellant
v.
Burlington Northern Santa Fe
Appellee

Appellant's motion to supplement the record is hereby ordered taken with the case for consideration by the panel to which this case is submitted for disposition on the merits. (5082-010199) July 12, 2006 order entered under rule 7b(a) clerk, U.S. Court of Appeals, Eighth Circuit. *United States Court Of Appeals For The Eighth Circuit Re: 06-1281 Counsel: Daniel R Baird vs BNSF Railway Dear Counsel: Enclosed is a copy of an order entered today in the above case at the direction of the court. Please note that your response is due in the St. Paul Clerk's Office on or before March 1, 2006 (5009-010199) District Court/Agency case Number (s): CIV 05-731 DWF/RLE.

APPENDIX – B

The United States Court Of
Appeals For The Eighth Circuit
No 01-1914

Daniel R. Baird Appellant v.
Burlington Northern and Santa Fe
Company Defendant, United
Transportation Union
[UNPUBLISHED]

Before BYE and BEAM, Circuit
Judges, and GOLDBERG,[2] Judge.
PER-CURIAM

Daniel Baird sued his employer, Burlington Northern and Sante Fe Railway Company (BNSF), and his Union, the United Transportation Union (U1U), claiming entitlement to benefits under a severance agreement that closed a railway terminal in Staples~ Minnesota, in 1994. Baird's claims against BNSF were quickly dismissed, but he proceeded against the UTU alleging a breach of the duty of fair representation under the Railway Labor Act and a

[2] The Honorable Richard W. Goldberg, Judge, United States Court of International Trade, sitting by designation.

claim under Minnesota law for intentional infliction of emotional distress (DED). The district court[3] granted UTU's motion for summary judgment on both claims and we affirm.

Assuming *debutante* that the UTU owed Baird a duty to represent him in his grievance proceeding against BNSF ~ we hold that the UTU did not breach that duty. A breach of the duty of fair representation occurs only when the union's conduct is "arbitrary, discriminatory, or in bad faith." Vaca v. Sipes. 386 U.S. 171, 190 (1967); see Peters v. Burlington Northern R.R Co., 931 F2d 534" 538 (9th Cir. 1991) (applying this standard in a Railway Labor Act case). A union member faces a considerable burden in proving breach of duty. Mere negligence, poor judgment or ineptitude by a union is insufficient to establish a breach of the duty of fair representation.'" Buford v. Runyon" 160 F.3d 1199, 1202 (8th Cir. 1998). Baird's proof of breach is largely based on a dispute with the UTU over the proper interpretation of the severance agreement and his entitlement to benefits hereunder. The UTU's

[3] The Honorable John R. Tunheim" United States District Judge for the District of Minnesota.

considered opinion that Baird was ineligible to receive benefits falls well short of conduct that: is "arbitrary, discriminatory, or in bad faith." Vaca 386 U.S. at 190. Baird's additional arguments that the UTU failed to investigate his promotion to Grand Forks~ North Dakota three weeks before the severance agreement was implemented; reconsidered the claims of other employees but not his; and certified only a few employees as eligible for benefits likewise fail to persuade us that the UTU breached any duty it may have owed him.

Baird's IIED claim against the UTU lacks merit. To prevail, Baird must at a minimum show that the UTU's conduct was extreme and outrageous, Hubbard v. United Press Int'l Inc. 330n.w. 2d 428,438-39 (Minn. 1983), which means conduct that is " so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community," Haagenson v. Nat'lFarmers Union Property & Cas. Co., 277 N.W.2d 648, 652 n.3 (Minn. 1979). We think it perfectly obvious that Baird cannot meet this formidable burden. Even considering all of Baird's evidence in a favorable light, no reasonable person could conclude that the

UTU's mere refusal to represent Baird during his BNSF grievance was utterly intolerable in a civilized society.

We affirm the judgment of the district court in all respect .

A true copy.

Attest:
CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX - C

Case O:05-cv-00731- •. DWF-RLE Document 32
Filed *121.LL/2005* Page 1 of 5
UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA Daniel R. Baird, Plaintiff, Civil No. 05-31 DWF/RLE)Burlington Northern Santa Fe Railroad, Defendant. MEMORANDUM OPINION Al'U> ORDER Brian T. Hardwick, Esq., Brian T. Hardwick, PA, counsel for Plaintiff; and Daniel R. Baird, *Pro Se,* P.O. Box 627, Warroad, 1m 56763. Chaya Bail, Esq., and David M. Pryor, Esq., BNSF Railway Law Dept.; and Diane P. Gerth, Esq., and Rodney A. Honkanen, Esq., Spence Ricke Sweeney & Gernes, counsel for Defendant. Introduction The above-entitled matter came before the undersigned United States District Judge on November 18, 2005, pursuant to a Motion for Summary Judgment brought by Burlington Northern Santa Fe Railroad ("BNSF"). In his Complaint, Plaintiff Daniel R. Baird asserts that BNSF breached an agreement to pay him relocation benefits as the result of a 1994 relocation caused by operational changes at BNSF. For the reasons set forth below, BNSF's Motion for Summary Judgment is granted. Background Baird began working for BNSF in 1979 as a conductor and trainman in Grand Forks, North Dakota. In October 1984, Baird transferred to Staples, Minnesota, where he lived until 1994. During this time, Baird was a member of the United Transportation Union ("UTU").

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Filed *12!£.L/2005* Page 2 of 5
Baird completed engineer training on July 9, 1989. Subsequently, Baird obtained his certification as a locomotive engineer and became a member of the

Brotherhood of Locomotive Engineers ("BLE"). However, Baird was not promoted to an engineer position with BNSF until February 28, 1994, at which time he was transferred to Grand Forks, North Dakota. On March21, 1994, a change in operations occurred, resulting in the transfer of the bulk of train service employees from Staples to Dilworth. On April 24, 1994, Baird's engineer position was relocated to Dilworth, Minnesota, as a result of this change in operations. Baird received some location benefits as a result of this relocation. UTU had entered into an agreement with BNSF on November 5, 1993, awarding wage protection and moving expenses to train service employees (conductors and brakemen, but not engineers) located in Staples as of March 21, 1994. After Baird was relocated to Dilworth, Baird's request for wage protection and relocation was denied because at the time of the implementation of the UTU's agreement, Baird was an engineer, not a conductor. Baird filed a lawsuit against BNSF and UTU regarding this denial. This lawsuit was ultimately dismissed by this Court and, to the extent that it was appealed, the Eighth Circuit Court of Appeals upheld the Court's decision. *Baird v. Burlington Northern and Santa Fe R.R Co.,* 169 F. Supp. 2d 1019 (D. Minn. 2001) (Tunheim, J.); *aff'd24* Fed. Appx. 629 (8th Cir. 2001). Baird also pursued relocation benefits through the engineering channels. However, the BLE relocation benefit package only applied to employees who were engineers as of February 15, 1988. Because Baird was a conductor and not an engineer on that date, he did not qualify for benefits under the BLE relocation package, either. Baird filed a grievance, claiming that he was due the full relocation benefits under the BLE relocation package. (Affidavit of Diane P. Gerth ("GerthAff.") at Exs. D, E.) Baird's Page 2 Filed *12/L.L/2005* Page 3 of 5 grievances was denied. Baird then appealed this decision to a Public Law Board. Public Law Board 5939 denied the grievance on August 14, 1998.

(Gerth Aff. at Ex. C.) The Public Law Board determined that because Baird was not an engineer as of February 15, 1988, the date set in the BLE relocation package agreement, Baird was not entitled to benefits under the agreement. *(Id.)* Essentially, Baird fell through the cracks of both the UTU and BLE relocation benefit packages. Baird's Complaint seeks damages amounting to the differential between the relocation benefits that he received from his employer in 1994, and the full range of benefits that were provided by the BLE agreement. BNSF has brought this Motion for Summary Judgment, asserting that: (1) Baird's claims are barred by the two-year statute of limitations for arbitrable decisions under the Railway Labor Act; (2) Baird has set forth no reason for the Court to overturn the arbitration award; and (3) even if Baird's cause of action was not otherwise barred, it would be untimely under the contractual statute of limitations set forth in Minn. Stat. § 541.05, subd. 1(1).

Discussion

BNSF asserts that Baird's claims are barred by the two-year statute of limitations for arbitrable decisions set forth in the Railway Labor Act. Undisputedly, Baird's challenge was subject to the mandatory dispute resolution procedures of the Railway Labor Act. Because Baird was not an engineer as of February 15, 1988, Baird was denied the full range of relocation benefits that were allowed to BNSF employees employed as engineers as of that operative date. The Public Law Board denied Baird's claim on August 14, 1998. Baird's challenge to this denial is the essence of his Complaint. Case O:05-cv-00731-DWF-RLE Document 32 Filed *12/L2/2005* Page 4 of 5

The statutory provisions that govern the temporal limits of the Court's review of the Public Law Board's decision are set forth in 45 U.S.C. § 153, First (r), which states:All actions at law based upon

the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after. Plainly, Baird did not commence this lawsuit until August 11,2005, nearly seven years after the denial by the Public Law Board. Thus, Baird's claim fails to fall within the two-year statute of limitations and should be dismissed. Even if Baird had brought his claim within the appropriate statute e of limitations set forth in 45 U.s.c. § 153, Baird has not set forth sufficient evidence to allow the Court to overturn the Public Law Board's decision. The scope of judicial review of arbitration awards under the Railway Labor Act is "among the narrowest known to the law." *Int'l Ass'n of Machinists and*

Aerospace Workers, AFL-CIO v. *Northwest Airlines, Inc.,* 858 F.2d 427,429 (8th Cir. 1988). Courts may set aside board orders on three grounds: (1) the board's failure to comply with the provisions of the Railway Labor Act; (2) failure of the order to confine itself to matters within the scope of its jurisdiction; and (3) fraud or corruption. *!d.* (citing 45 D.S.C. § 153, First (q)). Baird has not asserted that any of these grounds is present here. Thus, Baird's claim is appropriately dismissed in this regard. Finally, even if Baird's claims were not subject to the provisions of the Railway Labor Act, the claims would be barred by the six- year statute of limitations set forth in Minn. Stat.§ 541.05, subd. 1(1).

Accordingly, IT IS HEREBY ORDERED THAT:

1. Defendant's Motion for Summary Judgment (Doc. No.7) is GRANTED;2.

Plaintiffs Complaint is DISMISSED WITH PREJUDICE.

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LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: December 22, 2005
s Donovan W. Frank DONOVAN W.
FRANK
Judge of United States District Court Page 5

APPENDIX - D

UNITED STATES DISTRICT

COURT DISTRICT OF

MINNESOTA Civil No. 98-2499

(JRT/RLE) Daniel R Baird plaintiff vs.

Burlington Northern and Santa Fe Railroad and

United Transportation Union Defendants

Memorandum Opinion and Order Granting

United Transportation Union Motion For

Summary Judgment

Bruce A. Schoenwald, STEFANSON, PLAMBACK, FOSS & FISHER, 403 Center Avenue, Suite 302, Moorhead, MN 56560, for plaintiff.

Kevin C. Brodar, Associate General Counsel, UNITED TRANSPORTATION UNION, 14600 Detroit A venue, Cleveland, Ohio, 44107-4250; Courtney LeNeave, HUNEGS, STONE, LENEA VE, KV AS & THORNTON, *1650* International Centre, 900 Second A venue South, Minneapolis, MN, 55402, for defendant United Transportation Union.

This is a duty of fair representation case arising under the Railway Labor Act (the "RLA"), 45 D.S.C. §§ 151 *et seq,l* Plaintiff sues defendant, the United Transportation Union (the "UTU"). claiming that the union breached its duty of fair representation when **I** although plaintiff originally plead federal question jurisdiction under the labor Management Relations Act ("LMRA n). 29 U.S.C. § 185. the Court construed plaintiffs complaint to plead jurisdiction under the RLA in its August 12, 1999 Order denying the UTU's motion to

dismiss. it refused to represent plaintiff in his grievance with plaintiff's employer, the Burlington Northern Santc Fe Railroad Company ("BNSF,,).2 Plaintiff believes he is entitled to benefits under an interdivisional service agreement between the UTU and BNSF. Plaintiff also asserts a claim of intentional infliction of emotional distress against the lJTlJ. The UTU now moves for summary judgment. For the reasons that follow, the Court grants its motion. BACKGROUND The railroad industry divides its employees into various classes and crafts for purposes of collective bargaining. The craft at issue in this ease is what the industry calls the "operating crafts" - those crafts directly involved in the movement of trains. The operating crafts are divided into two separate classifications: 1) engine service and 2) train service. The engine service craft consists of engineers and its certified representative is the Brotherhood of Locomotive Engineers (the "BLE"). The train service craft consists of conductors and brakemen and its certified representative is the UTU. Beginning in the mid-1980s, BNSF decided to eliminate a terminal in Staples, Minnesota and run what is known as "interdivisional service" from Minneapolis to? Oilwollh, Minnesota. To implement this change, BNSF entered into two separate agreements, one with the BLE for engineer (the "BLE Agreement"), the other with the UTU for train service employees (the "UTU Agreement"). BNSF and the BLE entered , In his complaint. plaintiff also sued BNSF. however, the Court granted BNSF's motion to dismiss by order dated August 12. 1999. into its agreement in 1985, however, implementation of the agreement did not occur until 1988. According to amended section I(b) of the BLE Agreement, engineers who were home terminal at Staples on February 15, 1988, were certified as adversely affected. Several years later, BNSF entered into negotiations with the UTU to eliminate train service from the Staples tennina1. Although the UTU Agreement was signed on November 5, 1993, it was

not implemented until March 21, 1994.Plaintiff began working for BNSF in 1979 as a train service employee in Grand Forks, North Dakota. In 1984, he was transferred to Staples, Minnesota in train service, where he remained for the next ten years. In 1988, plaintiff entered the Locomotive Engineers Training Program, which he completed on July 9, 1989. Beginning in 1990, plaintiff worked intermittently as an engineer, but according to plaintiffs complaint he remained a conductor in the train service craft. On February 28, 1994, plaintiff received official notice from BNSF to report to Grand Forks on March 3, 1994 as an engineer.[3] Plaintiff has worked as an engineer and member of the engine craft ever since, however, he remained in Grand Forks only until April 24, 1994, at which time he was transferred to Dilworth. On March 21, 1994, BNSF implemented the UTU Agreement for train service employees in Staples, Minnesota. After the run-through, many employees, including plaintiff, filed claims with BNSF claiming they qualified for the benefits under the UTU Agreement. Plaintiff was notified a few months later by Robert Tangen, the UTU local chairperson, that the UTU would not handle his claim because at the time of the UTU J Plaintiff's transfer from conductor to engineer promotion. Page - 3 • Agreement's implementation, plaintiff was an engineer under the BLE Agreement. For the next four years, plaintiff pursued his claim at the various levels of administration claiming he qualified for benefits under the UTU or the BLE agreement. Plaintiff was represented by the BLE throughout this process. On August 14, 1998, the Public Law Board issued its decision. The Board concluded that plaintiff did not qualify for benefits under the BLE Agreement because he finished his engineering training in 1989, over a year after the date upon which engineers were certified as adversely affected under the BLE Agreement. The Board also noted that plaintiff did not fall under the UTU Agreement because that agreement covered only conductors,

brakemen and firemen working at Staples Minnesota as of March 21, 1994. Because plaintiff was working as an engineer in Grand Forks on that date, he did not qualify for benefits under the agreement. Three months after the Board's ruling, plaintiff filed this action against BNSF and the UTU claiming, among other things, that the UTU breached its duty of fair representation. Both BNSF and the UTU filed motions to dismiss. The Court granted BNSF's motion, but denied the UTU's motion on the basis that the Court had subject matter jurisdiction under the RLA to entertain plaintiff's duty affair representation claim. This mutter is now before the Court on the UTU's motion for summary judgment. ANALYSIS Standard of Review Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as n matter oflaw. *See* Fed. R. Ci\'. P. ·4· 56(c). In considering a motion for summary judgment, a court is required to view the facts in a light most favorable to the nonmoving party. *See Lornar Wholesale Grocery,Inc. v. Dieter's Guurmet Foods. Inc.*, 824 F.2d 582, 585 (8th Cir. I ~87). Summary judgment is to be granteu only where the evidence is such that no reasonable jury could return a verdict for the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears thc burden of bringing forward sufficient evidence to establish that there are no genuine issues of material fact and that the movant is entitled to judgment as a matter of law. *See Ce/otex Corp. v. Catrett,* 477 U.S. 317, 322 (1986). II. Duty of Fair Representation Claim.A.
Duty The UTU contends that it did not owe plaintiff a duty to represent him in his grievance for benefits under the UTU Agreement because, as of March 3, 1994, plaintiff was no longer a member of the train service craft for which the UTU was its exclusive representative Plaintiff argues that the UTU owes him a duty of representation because his rights under the agreement vested on November 5, 1993, the date

upon which the UTU and BNSF signed the agrcement.[4] In support of his vested rights theory, plaintiff relics heavily on *Anderson* \'. *AT&T,* 147 F.3d 467 (6[1h] Cir. 1998), in which the court allowed 4 Section 22 of the UTU Agreement provides: This agreement shall be cm .. ctivc upon th~ dat~ signed ilnd may be implemented by the Carrier at any time thereafter. Page·5 . plaintiffs to claim benefits under their fomer union agreement even though they had been transferred to a different union and fell under a different union agreement. *Id.* at 475. Plaintiff claims the same should hold true here. Because plaintiff was a member of train service craft on the date the UTU agreement was signed, his rights under the agreement vested on that date. Therefore, he can still claim benefits under the agreement even though he is no longer a member of that union.Although section 22 of the UTU Agreement renders the determination of when benefits accrue under the contract somewhat ambiguous, a review of the specific contract provisions relating to the benefits at issue in this case indicate that implementation of the UTU Agreement is the date upon which benefits accrue. Section 19(a) and the provisions discussed therein, provide, in relevant part: Conductors, brakemen and firemen, who are affected as a result of this agreement, and who have not previously participated in receiving similar benefits allowable under the Brotherhood of Locomotive Engineers agreement applicable to interdivisional service in this corridor, shall, pursuant to Section 7, Article LX of the October 31, 1985 UTU National Agreement, be afforded the protective conditions set forth in Article XIII of the January 27, 1972 UTU National Agreement. Section 7, Article IX of the October 31, 1985 UTU National Agreement provides
that: The provisions of Article XIII of the January 27, 1972-Agreement shall apply to employees adversely affected by the application of [interdivisional service].(Emphasis 3dded.) Article XIII of the January 27, 1972 UTU National

Agreement states, in relevant part: The scope und purpose of this Article Xlii are to provide, to the extent specified herein, for fair and equituble urrangements to protect the interests of certuin of the caniers' employees represented by the Union Page·6·plaintiffs to claim benefits under their former union agreement even though they had been transferred to a different union and fell under a different union agreement. *Id.* at 475. Plaintiff claims the same should hold true here. Because plaintiff was a member of train service craft on the date the UTU agreement was signed, his rights under the agreement vested on that date. Therefore, he can still claim benefits under the agreement even though he is no longer a member of that union. Although section 22 of the UTU Agreement renders the determination of when benefits accrue under the contract somewhat ambiguous, a review of the specific contract provisions relating to the benefits at issue in this case indicate that implementation of the UTU Agreement is the date upon which benefits accrue. Section 19(a) and the provisions discussed therein, provide, in relevant part: Conductors, brakemen and firemen, who are affected as a result of this agreement, and who have not previously participated in receiving similar benefits allowable under the Brotherhood of Locomotive Engineers agreement applicable to interdivisional service in this corridor, shall, pursuant to Section 7, Article LX of the October 31, 1985 UTU National Agreement, be afforded the protective conditions set forth in Article XIII of the January 27, 1972 UTU National Agreement.

Section 7, Article IX of the October 31, 1985 UTU National Agreement provides that The provisions of Article XIII of the January 27, 1972-Agreement shall apply to employees adversely affected by the application of [interdivisional service]. (Emphasis 3dded.) Article XIII of the January 27, 1972 UTU National Agreement states, in relev3nt purt: The

scope und purpose of this Article Xlii are to provide, to the extent specified herein, for fair and equituble urrangements to protect the interests of certuin of the carrers' employees represented by the United Page ·6· June 29, 1986, and will continue as long as the employee remains in a PRODUCTION OCCUPATlON LEVEL." *Jd.* The Sixth Circuit held that plaintiffs, who were union members under the agreement on June 29, 1986, were entitled to continue collecting the benefits after their transfer because they continued to work in a production occupation level with AT&T. *Jd.* In contrast, the protections afforded by section 19(a) of the UTU agreement were not immediately ascertainable but rather lay donnant until implementation of interdivisional service occurred. Although the parties could have contracted for benefits to accrue immediately or upon a set date other than implementation, they did not.[6] B. Breach of Duty Plaintiff is unable to establish a breach of the UTU's duty of fair representation. It is well-established that a union breaches its duty of fair representation only where its conduct is «arbitrary, discriminatory or in bad faith." *Vaca v. Sipes,* 386 U.S. 171, 190 *(1967); Smith v. United Parcel Serv., Inc.,* 96 F.3d 1066, 1068 (8[1h] eif. 1996). In this case, the focus is on the arbitrary prong of the *Vaca* test. A union's conduct is arbitrary if, "considering all the circumstances at the time of the union's actions, its behavior is 'so far outside a wide range of reasonableness' as to *be* illonal:' *Smith.* 96 F.3d at 1068 (quoting *Beavers v. United Papeli1'Orkers JIll'/ Union. Local* 1741. 72 F.3d 97, 100 (8[1h] Cir. 1995)). "Mere negligence, poor judgment or 6 It is also significant that plaintiff's transfer on March 3, 1994 was a pcnnancnt transfer to the engine servicc craft. A closer question conccrning thc UTU's duty to protcc.t plaintiIT's interests might be presented had

plaintifTbeen called UI' as an engineer only temporarily, as was the case in previous years, yet remained at mcmbcr of the train service cl1lfi. Page·8· ineptitude are insufficient to establish a breach of the duty of fair representation." *Buford v. Runyon,* 160 F.3d 1199, 1202 (8[1h] Cir. 1998). A union does not act arbitrarily simply because it docs nol pursue a grievance that it has decided, in good faith, lacks merit. *Schmidt v. International Brotherhood of Electrical Workers, Local* 949, 980 F.2d 1167, 1170 (Slh Cir. 1992); *Schlitz v. Burlington Northern Railroad.* liS F.3d 1407, 1415 (Slh Cir. 1997) (plaintiff must demonstrate both that the underlying grievance has merit and that the union failed to fairly represent him). However, "a union cannot arbitrarily ignore a meritorious grievance or process it in perfunctory fashion." *Vaca,* 386 U.S. at 900. At oral argument, plaintiffs counsel asked the Court to focus on the arbitrariness of the UTU's conduct throughout this process. Specifically, plaintiff argues that the UTU acted arbitrarily and thus irrationally by refusing to consider plaintiffs grievance, failing to look into his transfer to Grand Forks three weeks prior to implementation of interdivisional service, reconsidering adverse affect claims of employees at the Mandan terminal but not Staples, and certifying only a small number of employees as adversely affected by implementation. The Court has carefully reviewed each of plaintiff's arguments in the light most favorable to him, however, the Court is unable to find that the UTU's conduct rises to the level of arbitrariness set forth in the standards discussed above. First, the UTU's decision not to gricve plaintiffs claim was not so arbitrary as to be irrational. The UTU reached its decision based on its understanding that only conductors, trainmen and firemen Page - 9 –working in Staples on the date of

implementation qualified for adverse affect benefits under Section 19(a) of the UTU Agreement. While plaintiff might disagree with this interpretation, the UTU'~ determination that plaintiff did not qualify under the agreement was, at a minimum, a plausible interpretation. Indeed, the UTU's interpretation was shared by BNSF and a federal neutral at plaintiffs hearing before the public law board. *See Schiltz,* I] 5 F.3d at 1415 (union did not breach its duty of representation where NRAB independently determined that plaintiff's claim lacked merit). This case is also distinguishable from more typical duty of fair representation cases in that the UTU was no longer plaintiffs union representative at the time it was asked to file a grievance on plaintiffs behalf. Thus, under these facts and circumstances, the Court finds that the UTU's decision not to grieve plaintiffs claim was not "so far outside the wide range of reasonableness" as to be irrational. The Court also finds that the UTU did not act arbitrarily or in bad faith in not looking into plaintiff's transfer to Grand Forks as an engineer three weeks prior to implementation of the UTU Agreement. The record indicates that the UTU's duty extended only to ensuring that BNSF initially offer engineer promotions to conductors in train service prior to considering other candidates. In this instance, the UTU was relieved of any duty to investigate because BNSF complied with its contractual obligations in its selection of plaintiff. The record also indicates that the UTU did not arbitrarily re-open adverse affect claims at the Mandan terminal but not others. As the Filter affidavit und other documents Page- 10· explain the UTU reconsidered claims in Mandan after it was discovered that BNSr provided erroneous wage infonnation for two Mandan employees. No such errors were discovered in other locations, including

Staples. In light of these facts, the UTU's presumption that errors were limited to the Mandan terminal was not irrational. Finally, although the actual pool of employees who were determined adversely affected by the transfer was small, there is no evidence to support plaintiffs contention that the UTU made the deteminations in an arbitrary fashion. The Court has reviewed the adverse affect documents submitted in the record and is satisfied that a structured and fair process was applied.? The Court thus holds that the UTU's conduct was not arbitrary as a matter of law.

III. Intentional Infliction of Emotional Distress Claim

Plaintiff also asserts a claim for intentional infliction of emotional distress against the UIU. Even if this claim was not pre-empted, as argued by defendant, plaintiff fails to provide sufficient evidence to support his claim. To sustain a claim for intentional infliction of emotional distress, plaintiff must show that (1) the conduct was extreme and outrageous; (2) the conduct was intentional or reckless; (3) it caused emotional distress; and (4) the distress was ever. *Hubbard* 1'. *United Press l/lt'l. Inc.,* 330 N. W.2d 428,

438-39 (Minn. 1983). Plaintiff bears a heavy burden of proof in establishing a claim for

7 The process involved a comparison of a train member's wage prior to and after interdivisional service was implemented on March 21, 1994. Train service members who made less money than before were certified us adversely affected. The records indicate that the majority of employees received either the same or slightly higher wage in Dilworth than in Staples, thus accounting for the small number employees who qualified for benefits .

Page. 1 1 mental distress. *Jd.* at 439. To be "extreme and outrageous" defendant's conduct must be "so atrocious that it passes the boundaries of decency and

is utterly intolerable 10 the civilized community." *Haagenson v. National Farmers Union Properly and Casualty Co.,* 277 N.W.2d 648, 652 n.3 (Minn. 1979) (citing Restatement (Second) of Torts § 46 cmt. d (I (5)). In this case, plaintiffs evidence fails to establish that the UTU's actions, even when considered cumulatively, constitute extreme and outrageous conduct "utterly intolerable in a civilized society." *Ill.* CONCLUSION The situation presented here is an unfortunate one as it is evident that plaintiff fell through the cracks of both union agreements. The Court is sympathetic to plaintiffs circumstances and applauds his efforts to pursue his claim this far. However, given the factual circumstances and the demanding legal standard to demonstrate a breach of the duty of fair representation, the Court grants defendant's motion for summary judgment. 8 M Because the Court finds that plaintiffs substantive claims fail, the Court does not address the other claims the UTll raised in its motion . Page 12 – Order Based upon the foregoing, the submissions of the parties, the arguments of counsel and the entire file and proceedings herein, IT IS HEREBY ORDERED that: I. Defendant UTU's motion for summary judgment [Docket No. 38] IS GRANTED. Plaintiffs claims against th 2. e United Transportation Union are DISMISSED, with prejudice.LET JUDGMENT BE ENTERED ACCORDINGLY. Dated March 13, 2001; John R. Tunheim United States District Judge

Public Law Board No. 5939 Case14 Award No. 14 Parties to Dispute BLE and BNSFSTATEMENT OF CLAIM Engineer D.R Baird claiming wage guarantee and additional relocation benefits related to his relocation from Staples, Minnesota to Dilworth,

North Dakota due to implementation of the Northtown-Dilworth interseniority agreement FINDINGS: This Board upon the }Whole, record and all the evidence, finds as follows That the parties were given due notice of the hearing; That the Carrier and Employees involved in this dispute are respectively Carrier & Employees within the meaning of the Railway Labor Act as approved June 21,1934; That this Board has jurisdiction over the dispute involved herein. On June 15, 1979, the Claimant was hired as a Brakeman/Switchman at Grand Forks, North Dakota. In 1984, he transferred to Staples, Minnesota as a Brakeman/Conductor. The Claimant worked in train service at Staples, Minnesota until September 6, 1988, when he entered the Carrier's Locomotive Engineer Training Program (LETP). He successfully completed engineer training on July 9, 1989. On July 8, 1985, the Carrier and the Brotherhood of Locomotive Engineers (hereinafter referred to as the BLE or the Organization) entered into an Employee Protection Agreement on behalf of Engineers who were adversely affected by implementation of Twin Cities-Dilworth and Superior-Dilworth interseniority district service. Under Section 1(b) of that Agreement, every Engineer who was home terminaled at Staples, Minnesota on April 1, 1985, was considered certified as adversely affected . On July 7, ·1988, the Carrier and the Organization entered into Side Letter No. 1 which amended the July 8, 1985 Employee Protection Agreement. This side letter was necessary due to delays in implementing interdivisional service between the Twin Cities and Dilworth. Side Letter No. 1 amended Section 1 (b) of the Employee Protection Agreement by providing that every

Engineer who was home terminated at Staples, Minnesota on February 15, 1988, was considered certified as adversely affected. On November 5, 1993, the Carrier and the United Transportation Union (hereinafter referred to as the UTU) entered into a similar interdivisional service agreement on behalf of train service employees operating in through freight service between the Twin Cities and Dilworth. That interdivisional service was implemented on March 21, 1994. On or about November 16, 1995, the Carrier and the UTU certified 17 employees as adversely affected by implementation of this interdivisional service. The Claimant was not one of these employees. At the time, he was working in engine service at Grand Forks, North Dakota. In 1994, the Claimant relocated from Staples, Minnesota to Dilworth, Minnesota. The Carrier reimbursed him for his relocation expenses. However, the Claimant alleges that many of the moving expenses granted employees by the aforementioned Employee Protection Agreements as well as remuneration for his lost earnings have not been allowed by the Carrier. He is requesting this Board to direct the Carrier to make these payments. The recompense sought by the Claimant is totally devoid of agreement support, in the opinion of this Board. Inasmuch as the Claimant was not an Engineer on April 1, 1985, the July 8, 1985 Employee Protection Agreement was inapplicable to him. Similarly, Side Letter NO.1 to that Agreement was also inapplicable since the Claimant was not an Engineer on February 15, 1988. As noted above, the Claimant did not complete engineer training until July 9, 1989. The November 9, 1993, UTU interdivisional service Agreement was inapposite to the Claimant since that Agreement

applied to conductors, brakemen and firemen at Staples, Minnesota who were adversely affected by implementation of interdivisional service between the Twin Cities and Dilworth. When this service was implemented, the Claimant was working in engine service at Grand Forks, North Dakota. Moreover, also, the UTU and the Carrier certified some 17 employees as adversely affected by this interdivisional service and the Claimant was not one of them.

That the Carrier reimbursed the Claimant for some of the expenses he incurred when he relocated from Staples to Dilworth, Minnesota does not alter the clear language of the UTU and BLE interdivisional service agreements. Those agreements were simply not apposite to the Claimant for the reasons explained above. Moreover, many of the expenses for which the Claimant is seeking reimbursement were not well documented. The receipts the Claimant submitted for his relocation from Staples to Dilworth were haphazard.

For all the foregoing reasons, the instant claim is denied AWARD:

Claim denied. *&d41tC9'~*
Robert M O'Brien, Chairman and Neutral Member

The Employee dissent
Don M. Hahs, Employee Member

R L Luther

R.L. Luther, Carrier member Dated August 14,1998

APPENDIX - E

National Railroad Adjustment Board First Division Award No 25952 Docket No.45840 File 03-1-02-1-B-2173 The First Division consisted of the regular members and in addition Referee Robert Richter when award was rendered Parties to Dispute: DR.Baird v. BNSFST A TEI\1ENT OF CLAIJ\1: "Engineer Baird receives back pay and continuous wage protection, from the date of ID. run through, the. figures including. lose (sic) of, ages from unsettled merger and proper settlement's for improperly with holding and with interest on guarantees with held."FINDINGS: The First Division of the Adjustment Board, upon the whole record and the evidence, finds that: The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, applied June 21, 1934. This Division of the Adjustment Board has jurisdiction over the dispute involved herein. Parties to said dispute were given due notice of hearing thereon. Under the provisions of Article IX of the 1\13Y 1986 Arbitration Award No. 458 the Carrier established. inter-seniority district service between Minneapolis, 1\1innesota, and Dilworth, J\1innesota, and between Dilworth, 1\1innesota, and Superior, 'Wisconsin. The runs were effective October 1 J, 2000. Award No. 25952 Docket No. 45840 03-1-02-1-B-2173 The facts' *in* this case are that the Claimant was assigned to Mandan Pool at Fargo Dilworth prior to the transaction. ' After· October] 1, 2000the Claimant exercised: a seniority' move to the new Dil-Sup Pool. The Claimant's job was not abolished' nor was he displaced by a' senior employee. The implementation of (the new service did not cause the employee to exercise a' seniority move. The Claimant's Organization 3greed'with ,the Carrier that he was not adversely affected by the transaction.

Numerous tribunals have held that one must show a direct relationship between the implementation of the service and the alleged averse effect. The accepted way to determine as to whether an employee qualifies for an agreement is the loss of a regular job or a loss of earnings as a result of being involved in a chain' of displacement caused by the implementation of the transaction. In this case, the Caimant:fails to meet the requirements to be considered as an employee being adversely affected by the transaction.Claim denied. ORDER This Board, after consideration of the dispute, identified above, hereby orders' that an Award favorable, to the Claimant(s)·not be made. NATIONAL RAILROAD ADJUSTMENT BOARD By Order" of First Division Dated' at Chicago, Illinois, this] 8th day of December 2003.

APPENDIX – F

Letter

Docket No. 46018 Ms. Linda Woods Arbitration Assistant National Railroad Adjustment Board 844 North Rush, Room 944 Chicago.lL. 60611-2092 Dear Ms. Woods:This is a notice, as required by the rules of National Railroad Adjustment Board of my Imention to Fortnal protest the extension by the board. The letter of January 28 is giving this to Burlington Northern Santa FE a 15 day extension which has not been a two way street.Findings with accurate fads fail in my favor. I request a emendate submission from the board statirl§this settlement. The time limit has been exceeded. Sincerely, Daniel R. Baird BLEiENG cc: Mr. M. H. Siegele Assistance Vice-Pres. -Labor Relations Burlington Northern Santa Fe P.O. ~ffiC ~1030 Forth "fpqp, TX 76161-0030 Mr. 1'. fi,. PieiCe, General Chairman, BLE 801 Cheny st., Sie. 1010, Unit 8 Fort WorUi, TX 76102

Letter

National Railroad Adjustment Board

January 28,2004 To Mr. Siegle Re: Case No. 03-1-b-2197 review of our records indicates that we have not received your Submissions in the above-mentioned. Accordingly, we are granting you a 15 day extension of time from the date of this letter to file your Submission. No further extensions will be granted.

Letter April 1,2004

Gentlemen:am directed by the First Division of the National Railroad Adjustment Board to advise

you that Docket has been deadlocked. If you desire a hearing before the Division with the Referee present, please advise us to that effect promptly.

NATIONAL RAILROAD By Order of First Division ADJUSTMENT BOARD Award No. Docket No.46018 File 05-1-03-1-B-2197

Letter June 2, 2005

NRAB Case No. 05-1-103

Dear Mr. Baird:

This will acknowledge receipt at the National Railroad Adjustment Board of the National Mediation Board (NRAB) of the Notice of Intent submitted by the organization. In the Notice, the Individual stated its intent to file a Submission within 75 days covering an unadjusted dispute between Daniel R. Baird and Burlington Northern Santa Fe. NRAB Case No. 05-1-103 has been assigned to this case and must appear on all future correspondence relative to this matter. You are requested to furnish the original submission and any attachments to the NRAB by August 16, 2005. The submission and exhibits must be furnished electronically on a CD to the NRAB. The NRAB has established a Master File system for the submission of exhibits and documents regarding the same or similar claims. If subsequent notices concerning the same or similar claims are filed, the NRAB case listed above will be the Master File for exhibits, documents and any other evidence. There is no longer any need to file a set of identical documents for each case in a series. The Master File will be the only file used for exhibits and other documents for the cases in the series. The exhibits and other documents

in the Master File will be utilized by reference in other cases in the series. No duplicate sets will be received and filed. Documents which are unique to a particular case in the series will be accepted and filed in that NRAB case. A copy of the Notice of Intent is enclosed. Any questions should be directed to the NRAB staff at 312-751-4688.

Letter May 27, 2005 Daniel R Baird

Dear Ms. Wood This will serve as notice, as required by the rules of the National Railroad Adjustment Board of my, intention to file Ex Parte Submission covering an unjust dispute between the brotherhoods of locomotive Engineer D. R. Baird and the Burlington Northern/Santa Fe railroad company involving the following question. Penalty day for not providing lockers to all eployees at require locations Were they changed crew office. Also a penalty day requiring taking a long' Call for Dilworth crews at away terminal and northtown crews are not Required to do the same. The rules require me to file with the board first. In the past there has been a continuous effort not to give proper support to union employees by prolonging these cases. Through prolonging and ignoring cases filed they have given the process a bad name. The pulling of grievances by general chairmen has been used to prolong such grievances.

APPENDIX – G

Columbia or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carder (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Board pursuant to the authority which is conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Surface Transportation Board shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Board.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining & coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation

designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court' includes the United States District Court for the District of Columbia; and the term "court of appeals" includes the United States Court of Appeals for the District of Columbia.

This chapter may be cited as the "Railway Labor Act" (May 20, 1926, ch. 347, § 1,44 Stat 577; June 7, 1934, oft 426, 48 Stat. 926; June r 21, 1934, ch. 691, § 1,48 Stat. 1185; June25, 1936, ch. 804,49 Stat 1921; Aug. 13,
:1940, ch 664, §2, 3, 54 Stat. 785, 786; June 25, 1948, ch. 646, §32(a), (b), 62 Stat 991; May24, 1949, ch. 139, § 127, 63 Stat. 107.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act May 20, 1926, ch. 347, 44 Stat. 577 'as amended, known as the Railway Labor Act, which enacted this chapter and amended sections 225 and 348 of former Title 28, Judicial Code and Judiciary Sections 225 and 348 of former Title 28 were repealed by section 39 of act June 25, 1948, ch. 646, 62 Stat 992, section 1 of which enacted Title 28, Judiciary and Judicial Procedure. Section 225 of former Title 28 was reenacted as sections 1291 to 1294 of Title 28. For complete classification of this Act to the Code, see this section and Tables

CODIFICATION

(May 20, 1926, ch 347, §2, 44 Stat 577; June 21, 1934, oh. 691, §2, 48 Stat 1186.)

AMENDMENTS

1934-Act June 21, 1934, reenacted provisions comprising this section without change.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 157 of this title

§ 152. General duties
First Duty of carriers and employees to settle disputes

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. Consideration of disputes by representatives

All disputes between a carrier or carriers and its or their employees shall be considered, and, it possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute

Third. Designation of representatives

Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by, the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carder shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Organization and collective bargaining, freedom from interference by carrier, assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefore, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain

members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. Agreements to join or not to join labor organizations forbidden

No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way..

Sixth. Conference of representatives; time; place; private agreements

In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days alter the receipt of notice

of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such
conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. Change in pay, rules, or working conditions contrary to agreement or to section 156 forbidden

No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

Eighth. Notices of manner of settlement of disputes; posting

Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this chapter, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said S paragraphs are made a part of the contract of employment between the carrier and 5 each

employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. Disputes as to identity of representatives; designation by Mediation Board;. secret elections

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier, in the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records

of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. Violations; prosecution and penalties

The willful failure or refusal of any carrier, its officers or agents, to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000, nor more than $20,000, or imprisonment 5 for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense It shall be the duty of any United States attorney to whom any duly designated representative of a carrier's employees may apply to institute in the proper 5 court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of : such prosecution shall be paid out of the appropriation for the expenses of the courts

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition selling forth briefly the

causes for which he claims relief, and the order of the division of the Adjustment Board in the premises.. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial & such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage & the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorneys fee, to be taxed and collected as a part of the costs of the suit The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board:
Provided, however, That such order may not be set aside except for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be flied, a petition for review of

the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board The Adjustment Board shall file in the court the record of the proceedings on which it based its action The court shall have jurisdiction to affirm the order of the division, or to set it aside, in whole or in part, or it may remand the proceedings to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28.

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(s) The several divisions of the Adjustment Board shall maintain headquarters in
Chicago, Illinois, meet regularly, and continue in session so long as there is pending
before the division any matter within its jurisdiction which has been submitted for its
Consideration and which has not been disposed of.

AMENDMENTS

1934-Act June 21, 1934, amended generally par. First and par. Second, (e) and (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 156, 157, 183 of this title.

§ 156. Procedure in changing rates of pay, rules, and working conditions

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. in every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.
(May 20, 19263 ch. 347, §6, 44 Stat 582; June 21, 1934, ch 691, § 6, 48 Stat 1197.)

AMENDMENTS

1934-Act June 21, 1934, inserted "in agreements" after "intended change" in text, struck out provision formerly contained in text concerning changes

requested by more than one class, and substituted "Mediation Board" for "Board of Mediation" wherever appearing-

WAGE AND SALARY ADJUSTMENTS

Ex. Ord. No. 9299, eff. Feb. 4, 1943, 8 F.R. 1669, provided procedure with respect to wage and salary adjustments for employees subject to this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 152, 157, 726, 741, 797g, 1346 of this title; title 11 section 1167.

§ 157. Arbitration

First Submission of controversy to arbitration

1934-Act June 21, 1934, substituted "Mediation Board" for "Board of Mediation" wherever appearing

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 797g of this title.

§ 159. Award and judgment thereon; effect of chapter on individual employee

First Filing of award

The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. Conclusiveness of award; judgment

An award acknowledged and filed as herein provided shall be conclusive on the I parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after The filing of the award; a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerks office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third Impeachment of award; grounds

Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:
(a) That the award plainly does not conform to the substantive requirements laid down by this chapter for such awards, or that the proceedings were not substantially in conformity with this chapter
(b) That the award does not conform, nor confine itself to the stipulations of the agreement to arbitrate; or
(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided*, however, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this chapter: *Provided further*, That an award contested as herein provided shall be construed liberally by the court,

with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. Effect of partial invalidity of award

If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that apart of the award is valid, the court shall set aside the entire award: Provided, however, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. Appeal; record

At the expiration of 10 days from the decision of the district court upon the petition : bled as aforesaid, final judgment shall be entered in accordance with said decision, unless during said 10 days either party shall appeal therefrom to the court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. Finality of decision of court of appeals

The determination of said court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. Judgment where petitioner's contentions are sustained

If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part but in such case the parties may agree upon a judgment to be entered disposing of the subject mailer of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Duty of employee to render service without consent; right to quit

Nothing in this chapter shall be construed to require an individual employee to render laboror service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent
(May 20, 1926, ch. 347, §9, 44 Stat. 585; June 25, 1948, ch. 646, §32(a), 62 Stat 991; May 24, 1949, ch. 139, §127,63 Stat 107.)

CODIFICATION

As originally enacted, pars. Fifth and Sixth contained references to the "circuit court of appeals". Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

FEDERAL RULES OF CIVIL PROCEDURE